

2007 No. 2932

COMPANIES

FINANCIAL SERVICES AND MARKETS

LIMITED LIABILITY PARTNERSHIPS

PARTNERSHIP

**The Markets in Financial Instruments Directive (Consequential
Amendments) Regulations 2007**

<i>Made</i>	- - - -	<i>9th October 2007</i>
<i>Laid before Parliament</i>		<i>9th October 2007</i>
<i>Coming into force</i>	- -	<i>1st November 2007</i>

The Treasury are a government department designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to investment firms and to the provision of investment services;

The Treasury make the following Regulations in the exercise of powers conferred on them by section 2(2) of that Act:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Markets in Financial Instruments Directive (Consequential Amendments) Regulations 2007 and come into force on 1st November 2007.

(2) Regulations 2, 4, 5 and 7 have effect for financial years ending on or after 1st November 2007, subject to regulation 8.

(a) S.I. 1993/2661.

(b) 1972 c.68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51). By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L 1, 3.11.1994, p. 3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L 1, 3.1.1994, p. 572). For the decision of the EEA Joint Committee in relation to Directive 2004/39/EC, see Decision No 65/2005 of 29th April 2005 (OJ No L 239, 15.9.2005, p.50).

Amendments to the Companies Act 1985

““MiFID investment firm section 262(1)”.

(j) The entry for “ISD investment firm” in section 262A was inserted by S.I. 2006/2782. Section 262A is prospectively repealed by the Companies Act 2006.

Amendments to the Companies Act 2006

- 3.—(1) The Companies Act 2006(a) is amended as follows.
- (2) In section 384 (companies excluded from the small companies regime)—
- (a) in subsection (1)(b), for “an ISD investment firm” substitute “a MiFID investment firm”;
 - (b) in subsection (2)(d), for “an ISD investment firm” substitute “a MiFID investment firm”.
- (3) In section 467 (companies excluded from being treated as medium-sized), in subsection (2)(d), for “an ISD investment firm” substitute “a MiFID investment firm”.
- (4) In section 474 (minor definitions relating to Part 15), in subsection (1)—
- (a) omit the definition of “ISD investment firm”;
 - (b) at the appropriate place insert—

““MiFID investment firm” means an investment firm within the meaning of Article 4.1.1 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, other than—

 - (a) a company to which that Directive does not apply by virtue of Article 2 of that Directive,
 - (b) a company which is an exempt investment firm within the meaning of regulation 4A(3) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007, and
 - (c) any other company which fulfils all the requirements set out in regulation 4C(3) of those Regulations;”.
- (5) In section 478 (companies excluded from small companies exemption), in paragraph (b)(i), for “an ISD investment firm” substitute “a MiFID investment firm”.
- (6) In section 481 (companies excluded from dormant companies exemption), in paragraph (a), for “an ISD investment firm” substitute “a MiFID investment firm”.
- (7) In section 539 (minor definitions relating to Part 16)—
- (a) omit the definition of “ISD investment firm”;
 - (b) at the appropriate place insert—

““MiFID investment firm” means an investment firm within the meaning of Article 4.1.1 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, other than—

 - (a) a company to which that Directive does not apply by virtue of Article 2 of that Directive,
 - (b) a company which is an exempt investment firm within the meaning of regulation 4A(3) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007, and
 - (c) any other company which fulfils all the requirements set out in regulation 4C(3) of those Regulations;”.
- (8) In Schedule 8 (index of defined expressions)—
- (a) omit the entry for “ISD investment firm”;
 - (b) at the appropriate place insert—

““MiFID investment firm	
—in Part 15	section 474(1).
—in Part 16	section 539”.

(a) 2006 c. 46.

Amendments to the Companies (Northern Ireland) Order 1986

4.—(1) The Companies (Northern Ireland) Order 1986 is amended as follows.

(2) In Article 255A(a) (cases in which special provisions for small and medium-sized companies do not apply)—

- (a) in paragraph (1B)(b), for “an ISD investment firm” substitute “a MiFID investment firm”;
- (b) in paragraph (2)(ba), for “an ISD investment firm” substitute “a MiFID investment firm”.

(3) In Article 256 (exemption for small and medium-sized groups), in paragraph (2)(ba)(b), for “an ISD investment firm” substitute “a MiFID investment firm”.

(4) In Article 257AA (dormant companies), in paragraph (3)(a)(c), for “an ISD investment firm” substitute “a MiFID investment firm”.

(5) In Article 257B (cases where exemptions not available), in paragraph (1)(b)(d), for “an ISD investment firm” substitute “a MiFID investment firm”.

(6) In Article 270(e) (minor definitions relating to Part 8)—

- (a) omit the definition of “ISD investment firm”;
- (b) at the appropriate place insert—
 - ““MiFID investment firm” means an investment firm within the meaning of Article 4.1.1 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, other than—
 - (a) a company to which that Directive does not apply by virtue of Article 2 of that Directive,
 - (b) a company which is an exempt investment firm within the meaning of regulation 4A(3) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007, and
 - (c) any other company which fulfils all the requirements set out in regulation 4C(3) of those Regulations;”.

(7) In Article 270A(f) (index of defined expressions)—

- (a) omit the entry for “ISD investment firm”;
- (b) at the appropriate place insert—

“MiFID investment firm	Article 270”.
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Amendment to the Limited Liability Partnerships Regulations 2001

5. In Schedule 1 to the Limited Liability Partnerships Regulations 2001(g) (modifications to provisions of Part 7 of the Companies Act 1985 applied by those Regulations), in the entry relating to subsection (3) of section 249AA (dormant companies), for “an ISD investment firm” substitute “a MiFID investment firm”.

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- (a) Article 255A was inserted by S.R. (N.I.) 1997 No.436 and paragraphs (1B)(b) and (2)(ba) were inserted by S.R. (N.I.) 2006 No. 438.
 - (b) Article 256 was inserted by S.I. 1990/593 (N.I. 5) and paragraph (2)(ba) was inserted by S.R. (N.I.) 2006 No. 438.
 - (c) Article 257AA was inserted by S.R. (N.I.) 2001 No. 153, and paragraph (3)(a) was substituted by S.R. (N.I.) 2006 No. 438.
 - (d) Article 257B was inserted by S.R. (N.I.) 1995 No. 128 and paragraph (1)(b) was substituted by S.R. (N.I.) 2006 No. 438.
 - (e) Article 270 was substituted by S.I. 1990/593 (N.I. 5) and the definition of “ISD investment firm” was inserted by S.R. (N.I.) 2006 No. 438.
 - (f) Article 270A was inserted by S.I. 1990/593 (N.I. 5) and the entry relating to “ISD investment firm” was inserted by S.R. (N.I.) 2006 No. 438.
 - (g) S.I. 2001/1090; the entry relating to section 249AA(3) was substituted by S.I. 2006/2782.

Amendment to the Financial Services and Markets Act 2000 (Gibraltar) Order 2001

6. In article 2 of the Financial Services and Markets Act 2000 (Gibraltar) Order 2001(a), in paragraph (1A), for “investment services directive” substitute “markets in financial instruments directive”.

Amendment to the Limited Liability Partnerships Regulations (Northern Ireland) 2004

7. In Schedule 1 to the Limited Liability Partnerships Regulations (Northern Ireland) 2004(b) (modifications to provisions of Part 8 of the 1986 Order applied by those Regulations), in the entry relating to paragraph (3) of Article 257AA (dormant companies), for “an ISD investment firm” substitute “a MiFID investment firm”.

Transitional provision: accounting and audit requirements

8.—(1) This regulation has effect for a financial year (“the transitional financial year”) beginning before, but ending on or after, 1st November 2007.

(2) In the enactments amended by regulations 2, 4, 5 and 7 the references to a “MiFID investment firm” do not include a person who satisfies conditions A and B.

(3) Condition A is satisfied if, at any time that is within the transitional financial year and is before 1st November 2007, the person would have been a MiFID investment firm if Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments had had effect at that time.

(4) In paragraph (3), “MiFID investment firm” has the same meaning as in section 262 of the Companies Act 1985 (as it has effect on 1st November 2007, disregarding this regulation).

(5) Condition B is satisfied if the person—

- (a) was not, at any time that is within the transitional financial year and is before 1st November 2007, an ISD investment firm within the meaning of section 262 of the Companies Act 1985 (as it had effect at that time), and
- (b) would not, at any time that is within the transitional financial year and is on or after 1st November 2007, have been such a firm if that section and Council Directive 93/22/EC of 10 May 1993 on investment services in the securities field(c) had had effect at that time as they had effect immediately before 1st November 2007.

Dave Watts

Frank Roy

9th October 2007

Two of the Lords Commissioners of Her Majesty's Treasury

(a) S.I. 2001/3084; paragraph (1A) of article 2 was inserted by S.I. 2006/1805.

(b) S.R. (N.I.) 2004 No. 307; the entry relating to Article 257AA was substituted by S.R. (N.I.) 2006 No. 438.

(c) OJ No L 141, 11.6.1993, p. 27.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Companies Act 1985 (c. 6), the Companies Act 2006 (c. 46), the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090), the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (S.I. 2001/3084) and the Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. (N.I.) 2004 No. 307) in consequence of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No L 145, 30.4.2004, p.1) (“MiFID”). MiFID is also implemented by other statutory instruments including the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126 amended by S.I. 2007/763 and 2160) and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384) and by the Financial Services Authority using powers under the Financial Services and Markets Act 2000 (c. 8).

Regulations 2 to 5 and 7 update the class of companies and limited liability partnerships which should not be able to take advantage of accounting and auditing exemptions otherwise conferred by the Companies Acts 1985 and 2006 when the instruments implementing MiFID come into force (on 1st November 2007). References to “an ISD investment firm” are replaced by references to “a MiFID investment firm”. The amendments to the Companies Act 1985, the Companies (Northern Ireland) Order 1986 and the regulations applying to limited liability partnerships have effect for financial years ending on or after 1st November 2007, subject to transitional provision in regulation 8 exempting companies which will be MiFID investment firms but which were not ISD investment firms from the accounting and audit requirements for their transitional financial years.

Article 2 of the Gibraltar Order permits Gibraltar-based investment firms to be treated as having an entitlement corresponding to the entitlement of investment firms authorised in other EEA states under Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ No L 141, 11.6.1993, p.27) to establish a branch or provide services (“the passport rights”) in the United Kingdom. Regulation 6 amends article 2 to permit Gibraltar-based investment firms to be treated as having an entitlement corresponding to the entitlement of investment firms authorised in other EEA states under MiFID to exercise passport rights in the United Kingdom.

A transposition note has been prepared which sets out how the main elements of MiFID are transposed into United Kingdom law. A Regulatory Impact Assessment of the effect of the instruments transposing MiFID on the costs of business has been prepared. Both may be obtained from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. They are also available on HM Treasury’s website (www.hm-treasury.gov.uk). Copies of both documents have been placed in the libraries of both Houses of Parliament.

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